

BILL ANALYSIS

Senate Bill Analysis

H.B. 1186
By: Uher
Jurisprudence
04-24-91
House Engrossment

BACKGROUND

The Sunset Advisory Commission issued its report on decisions regarding the State Bar of Texas in November of 1990. This legislation provides for the continuation of the State Bar of Texas, and provides for changes as recommended by the Sunset Commission.

PURPOSE

As proposed, H.B. 1186 provides for the continuation and operation of the State Bar of Texas, and provides for changes relating to the state bar's and the state supreme court's functions concerning the regulation of attorneys.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the State Bar of Texas under SECTION 18, and to the Texas Supreme Court under SECTION 27.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 81.002, Government Code, to define "board of directors," "commission," and "chief disciplinary counsel," and "minority member."

SECTION 2. Amends Section 81.003, Government Code, to provide that the new sunset review date for the state bar is September 1, 2003.

SECTION 3. Amends Section 81.102, Government Code, to add to the list of purposes of the state bar that of fostering the role of the legal profession in serving the public.

SECTION 4. Amends Chapter 81B, Government Code, by adding Section 81.0151, as follows:

Sec. 81.0151. PURCHASING. Provides that the state bar is subject to the purchasing provisions of the State Purchasing and General Services Act.

SECTION 5. Amends Section 81.016(c), Government Code, to require that all property of the state bar be held in trust by the state supreme court for the attorneys in the state if the state bar ceases to exist.

SECTION 6. Amends Section 81.109(c), Government Code, to increase the number of bar members that are required on a petition for candidacy for president of the bar from one percent to five percent.

SECTION 7. Amends Section 81.020, Government Code, to create four minority member positions on the state bar board of directors appointed by the state bar president. Requires the director in making the minority appointments to attempt to appoint members of different minority groups, and sets the minority members terms at three years. Requires the agency to provide information on standards of conduct to board members and employees. Requires the board of directors to develop and implement policies which clearly define board and staff functions. Requires the board to develop an accessibility plan.

SECTION 8. Amends Section 81.021, Government Code, as follows:

Sec. 81.021. New title: OPEN MEETINGS; PUBLIC PARTICIPATION.

(b) Requires the board to develop and implement policies providing for public testimony at agency meetings.

SECTION 9. Amends Section 81.023, Government Code, as follows:

Sec. 81.023. New title: AUDIT; FINANCIAL REPORT.

(b) Requires the state bar to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.

SECTION 10. Amends Chapter 81B, Government Code, by adding Section 81.0221, as follows:

Sec. 81.0221. ALCOHOLIC BEVERAGES. Prohibits state bar funds from being used to purchase alcoholic beverages, but does not prohibit the use of funds voluntarily contributed to the bar for the purchase of alcoholic beverages.

SECTION 11. Amends Section 81.027, Government Code, to provide grounds and policy related to removal of a board member.

SECTION 12. Amends Section 81.029, Government Code, by adding Subsections (h)-(l), requiring the board to establish skill-oriented career ladders, requiring a system of merit pay based on documented employee performance, and requiring development of an equal opportunity employment policy.

SECTION 13. Amends Section 81.030, Government Code, to delete language related to the grievance process.

SECTION 14. Amends Section 81.031, Government Code, to add members of the board to those who are subject to the Texas conflict of interest law, and to prohibit certain registered lobbyists from acting as general counsel to the board or from serving as a member of the board.

SECTION 15. Amends Section 81.033, Government Code, as follows:

Sec. 81.033. OPEN RECORDS. (a) Creates this subsection out of existing text, and exempts records pertaining to grievances that are confidential under the Texas Rule of Disciplinary Procedure from the Texas Open Records Law.

(b) Provides that the use of confidential records for the client security fund does not waive confidentiality.

SECTION 16. Amends Chapter 81B, Government Code, by adding Section 81.034, as follows:

Sec. 81.034. RESTRICTION ON USE OF FUNDS. Prohibits the use of funds received by the state bar from being used for influencing the fate of legislation unless the legislation relates to the legal profession, the quality of legal services or the administration of justice, and the amount of the expenditure is reasonable and necessary. Provides that this subsection does not prohibit the members of the board or officer or employees of the bar from furnishing nonconfidential information to a member or committee of the legislature.

SECTION 17. Amends Section 81.053(a), Government Code, to specify that an inactive member of the bar may not practice law in this state.

SECTION 18. Amends Section 81.054, Government Code, to allow the state bar to adopt by rule a system providing for the staggered renewal of licenses.

SECTION 19. Amends Section 81.071, Government Code, to make a conforming change.

SECTION 20. Amends Section 81.072, Government Code, as follows:

Sec. 81.072. New title: DISCIPLINARY AND DISABILITY PROCEDURES. (a) Requires the supreme court to establish disciplinary and disability procedures. Deletes language pertaining to grievance procedures.

(b) Provides for processing an investigation of all complaints by state bar staff using standardized procedures. Requires that complainants be provided explanations on each dismissed action.

(c) Redesignates existing text.

(d) Provides that each attorney is subject to the Texas Rules of Disciplinary Procedure and the Texas Disciplinary Rules of Professional Conduct.

(e) Requires the bar to establish a voluntary mediation and dispute resolution procedure.

(f) Prohibits the responses to surveys of complaints urging views on grievance system experiences from identifying either the complaint or attorney and requires them to be open to the public. Sets forth what the topics must include.

(g) Prohibits a person from maintaining an action against a complaint or witness in a disciplinary proceeding based on a communication made by the complaint, or the chief disciplinary counsel. Provides that the immunity granted is absolute and unqualified.

SECTION 21. Amends Section 81.076, Government Code, as follows:

Sec. 81.076. New title: COMMISSION FOR LAWYER DISCIPLINE. (a) Creates the Commission for Lawyer Discipline to oversee the disciplinary and disability procedures and supreme court rules.

(b) Requires the commission to be composed of 12 members: six attorneys appointed by the president of the state bar and six public members appointed by the supreme court. Prohibits public members from having an interest in the profession of law, and allows the supreme court to remove any member for good cause.

(c)-(f) Make a conforming changes.

(g) Requires the commission to appoint a chief disciplinary counsel to administer the bar's grievance procedure, and allows the chief disciplinary counsel to investigate and prosecute suits to enjoin members, nonlicensees, and non-members of the bar from the practice of law.

(h) Requires the commission to report to the board of directors, the supreme court, and the legislature concerning the state of the discipline system and make recommendations at least annually.

SECTION 22. Amends Section 81.077(a), Government Code, to prohibit the supreme court from abrogating the right of trial by jury of an accused attorney in a disbarment action in the county of the residence of the accused attorney.

SECTION 23. Amends Chapter 81E, Government Code, by adding Section 81.079, as follows:

Sec. 81.079. PUBLIC NOTIFICATION AND INFORMATION. Requires efforts to improve the public's awareness of the complaint process including notice to clients by attorneys of the existence of the state bar's grievance process.

SECTION 24. Amends Section 81.094, Government Code, to further establish the statutory outline of the state bar's grievance process.

SECTION 25. Amends Section 81.103(a), Government Code, to make a conforming change.

SECTION 26. Amends Chapter 81G, Government Code, by adding Section 81.106, as follows:

Sec. 81.106. IMMUNITY. (a) Provides that the unauthorized practice of law committee or persons affiliated with the committee to whom the committee has delegated authority and who is assisting the committee is not liable for any damages for an act or omission in the course of the official duties of the committee.

(b) Provides that a complaint or a witness in a proceeding before the committee or a delegate of the committee and who is assisting the committee has the same immunity that a complaint or witness has in a judicial proceeding.

SECTION 27. Amends Chapter 22A, Government Code, by adding Section 22.011, as follows:

Sec. 22.011. JUDICIAL INSTRUCTION RELATED TO FAMILY VIOLENCE, SEXUAL ASSAULT, AND CHILD ABUSE. (a) Requires the supreme court to provide judicial training in family, violence, sexual assault, and child abuse.

(b) Requires the board to adopt rules to accomplish this section.

(c) Allows the supreme court to consult with professional groups and associations in adopting rules.

(d) Sets forth information required in the instruction.

SECTION 28. Amends Chapter 81H, Government Code, by adding Section 81.112, as follows:

Sec. 81.112. FEE DISPUTE RESOLUTION PROCEDURE. Requires the state bar to develop a standard fee dispute resolution procedure that can be used by a bar committee or another organization.

SECTION 29. Amends Chapter 81H, Government Code, by adding Section 81.113, as follows:

Sec. 81.113. CONTINUING LEGAL EDUCATION. (a) Requires the state bar to credit a state licensed attorney with meeting the minimum continuing legal education requirements of the state bar for a reporting year if during the reporting year the attorney is employed full time by a legislative body or other legislatively associated agencies, as enumerated.

(b) Requires the attorney gaining such credit to meet the continuing legal education requirements of the bar in legal ethics or professional responsibility.

SECTION 30. Repealer: Sections 81.073, 81.074, and 81.075, Government Code.

SECTION 31. Requires the state bar, within two years, to report to the legislature and the bar not later than January 1, 1993, on a mandatory pro bono program.

SECTION 32. (a) Requires submission of the first equal opportunity employment policy statement required by this Act by November 1, 1991.

(b) Abolishes the grievance oversight committee previously established by Section 81.076, Government Code.

SECTION 33. Makes application of requirements for continuing legal education for reporting years prospective.

SECTION 34. Effective date: September 1, 1991.

SECTION 35. Emergency clause.